

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT ALTADONNA, FRANCESCA
BARBAROSSA OTTO and GABRIELA
GASPAROVA,

Plaintiffs,

-against-

BROOME MERCER CORPORATION d/b/a
RUNWAY, GILBERT COHEN and LYNN
HERWITZ,

Defendants.

ANSWER TO
PLAINTIFFS'
FIRST AMENDED
COMPLAINT

Docket No.
07 Civ. 6668 (LAP)

Defendants BROOME MERCER CORP. ("BMC"), GILBERT COHEN, and LYNN HERWITZ, by their attorneys, MIRANDA SOKOLOFF SAMBURSKY SLOWE VERVENIOTIS LLP, as and for their answer to plaintiffs' First Amended Complaint dated March 17, 2008 (the "complaint"), set forth the following:

THE PARTIES

1. Deny knowledge or information to form a belief as to the allegations contained in ¶ "1" of the complaint, except admit that BMC employed plaintiff Altadonna as a salesperson from August 2005 through April of 2007.
2. Deny knowledge or information to form a belief as to the allegations contained in ¶ "2" of the complaint, except admit that BMC employed plaintiff Otto as a salesperson from August 2006 through April of 2007.

3. Deny knowledge or information to form a belief as to the allegations contained in ¶ “3” of the complaint, except admit that BMC employed plaintiff Gasparova (formerly Benedict) from April 2004 through March of 2005 and from April 2006 through April 2007.

4. Admit the allegations contained in ¶ “4” of the complaint.

5. Deny the allegations contained in ¶ “5” of the complaint, except admit that defendant Cohen is a resident of New York County and respectfully refer all questions of law to the Court for adjudication.

6. Deny the allegations contained in ¶ “6” of the complaint, except admit that defendant Herwitz is a resident of New York County and respectfully refer all questions of law to the Court for adjudication.

NATURE OF THE ACTION

7. Deny the allegations contained in ¶ “7” of the complaint, except admit that plaintiffs filed a charge with the EEOC and respectfully refer all questions of law to the Court for adjudication.

8. Deny the allegations contained in ¶ “8” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

JURISDICTION AND VENUE

9. Deny the allegations contained in ¶ “9” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

10. Deny the allegations contained in ¶ “10” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

11. Deny knowledge or information sufficient to form a belief as to the allegations contained in ¶ “11” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

FACTS

12. Deny the allegations contained in ¶ “12” of the complaint, except admits that BMC operates a retail clothing store in the SoHo region of New York City.

13. Deny the allegations contained in ¶ “13” of the complaint.

14. Deny the allegations contained in ¶ “14” of the complaint.

15. Deny the allegations contained in ¶ “15” of the complaint.

16. Deny the allegations contained in ¶ “16” of the complaint.

SEXUALLY HOSTILE WORK ENVIRONMENT AND RETALIATION

17. Upon information and belief, defendants admit the allegation contained in ¶ “17” of the complaint.

18. Deny the allegations contained in ¶ “18” of the complaint.

19. Deny the allegations contained in ¶ “19” of the complaint.

20. Deny the allegations contained in ¶ “20” of the complaint.

21. Deny the allegations contained in ¶ “21” of the complaint.

22. Deny the allegations contained in ¶ “22” of the complaint.

23. Deny the allegations contained in ¶ “23” of the complaint, except admit that BMC properly terminated plaintiff Altadonna’s employment.

24. Deny the allegations contained in ¶ “24” of the complaint.

25. Deny the allegations contained in ¶ “25” of the complaint.

26. Deny the allegations contained in ¶ “26” of the complaint.
27. Deny the allegations contained in ¶ “27” of the complaint.
28. Deny the allegations contained in ¶ “28” of the complaint, except admit that BMC properly terminated plaintiff Gasparova’s employment.
29. Deny the allegations contained in ¶ “29” of the complaint.
30. Deny the allegations contained in ¶ “30” of the complaint.
31. Deny the allegations contained in ¶ “31” of the complaint.
32. Deny the allegations contained in ¶ “32” of the complaint.
33. Deny the allegations contained in ¶ “33” of the complaint, except admit that BMC properly terminated plaintiff Otto’s employment.

FAILURE TO PAY OVER TIME WAGES

34. Deny the allegations contained in ¶ “34” of the complaint.
35. Deny the allegations contained in ¶ “35” of the complaint, and respectfully refer all questions of law to the Court for adjudication.
36. Deny the allegations contained in ¶ “36” of the complaint.
37. Deny the allegations contained in ¶ “37” of the complaint.
38. Deny the allegations contained in ¶ “38” of the complaint.

ILLEGAL WAGE DEDUCTIONS

39. Deny the allegations contained in ¶ “39” of the complaint.
40. Deny the allegations contained in ¶ “40” of the complaint.
41. Deny the allegations contained in ¶ “41” of the complaint.
42. Deny the allegations contained in ¶ “42” of the complaint.

43. Deny the allegations contained in ¶ "43" of the complaint.

44. Deny the allegations contained in ¶ "44" of the complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFFS' FIRST CAUSE OF ACTION**

45. Defendants repeat and reallege each and every denial set forth in ¶¶ "1" through "44" of this Answer as if more fully set forth at length herein.

46. Deny the allegations contained in ¶ "46" of the complaint.

47. Deny the allegations contained in ¶ "47" of the complaint.

48. Deny the allegations contained in ¶ "48" of the complaint.

49. Deny the allegations contained in ¶ "49" of the complaint.

50. Deny the allegations contained in ¶ "50" of the complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFFS' SECOND CAUSE OF ACTION**

51. Defendants repeat and reallege each and every denial set forth in ¶¶ "1" through "50" of this Answer as if more fully set forth at length herein.

52. Deny the allegations contained in ¶ "52" of the complaint, and respectfully refer all questions of law to the Court for adjudication.

53. Deny the allegations contained in ¶ "53" of the complaint.

54. Deny the allegations contained in ¶ "54" of the complaint.

55. Deny the allegations contained in ¶ "55" of the complaint and set forth that defendants did not have an overtime practice as alleged.

56. Deny the allegations contained in ¶ "56" of the complaint and set forth that defendants did not have an overtime practice as alleged.

57. Deny the allegations contained in ¶ “57” of the complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFFS' THIRD CAUSE OF ACTION**

58. Defendants repeat and reallege each and every denial set forth in ¶¶ “1” through “57” of this Answer as if more fully set forth at length herein.

59. Deny the allegations contained in ¶ “59” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

60. Deny the allegations contained in ¶ “60” of the complaint.

61. Deny the allegations contained in ¶ “61” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

62. Deny the allegations contained in ¶ “62” of the complaint.

63. Deny the allegations contained in ¶ “63” of the complaint.

64. Deny the allegations contained in ¶ “64” of the complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFFS' FOURTH CAUSE OF ACTION**

65. Defendants repeat and reallege each and every denial set forth in ¶¶ “1” through “64” of this Answer as if more fully set forth at length herein.

66. Deny the allegations contained in ¶ “66” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

67. Deny the allegations contained in ¶ “67” of the complaint, and respectfully refer all questions of law to the Court for adjudication.

68. Deny the allegations contained in ¶ “68” of the complaint.

69. Deny the allegations contained in ¶ “69” of the complaint.

70. Deny the allegations contained in ¶ "70" of the complaint.
71. Deny the allegations contained in ¶ "71" of the complaint.
72. Deny the allegations contained in ¶ "72" of the complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFFS' FIFTH CAUSE OF ACTION**

73. Defendants repeat and reallege each and every denial set forth in ¶¶ "1" through "72" of this Answer as if more fully set forth at length herein.
74. Deny the allegations contained in ¶ "74" of the complaint.
75. Deny the allegations contained in ¶ "75" of the complaint.
76. Deny the allegations contained in ¶ "76" of the complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFFS' SIXTH CAUSE OF ACTION**

77. Defendants repeat and reallege each and every denial set forth in ¶¶ "1" through "76" of this Answer as if more fully set forth at length herein.
78. Deny the allegations contained in ¶ "78" of the complaint.
79. Deny the allegations contained in ¶ "79" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

80. The complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

81. The defendants possessed legitimate, non-discriminatory reasons for their actions.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

82. One or more of plaintiffs' claims are barred by the applicable Statute of Limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

83. Defendants did not discriminate against plaintiffs, either on the basis of plaintiffs' sexual orientation or any other protected class.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

84. Defendants have not retaliated against plaintiffs.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

85. Defendants have acted within their discretion, and in accordance with defendant BMC's needs, procedures, and requirements.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

86. Defendants have acted, at all times relevant to plaintiffs' complaint, in conformity with all applicable statutes, laws, rules, and regulations.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

87. Plaintiffs have failed to mitigate their damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

88. The defendants are exempt from the overtime provisions of the FLSA and/or New York State Labor Law pursuant to the "retail or service establishment" and/or "commissioned salesman" exemption.

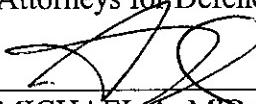
AS AND FOR A TENTH AFFIRMATIVE DEFENSE

89. No basis exists for this court to exercise jurisdiction over the plaintiffs' state law claims.

WHEREFORE, defendants request judgment dismissing the complaint and denying all relief requested therein, with such other and further relief as the Court deems just, equitable, and proper.

Dated: Mineola, New York
March 26, 2008

MIRANDA SOKOLOFF SAMBURSKY
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Attorneys for Defendants


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